IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

Crl.MC.No. 1753 of 2007()

LP.11/2004 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

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PETITIONER: ACCUSED

KAMALUDHEEN, S/O. ABDURAHIMAN,
PALLIYALIL HOUSE, VADAKANGARA
AMSOM AND DESOM,
MALAPPURAM DISTRICT.

BY ADV. SRI.VINOD VALLIKAPPAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. JUMAILATH, D/O.KUNJUMOIDU, MOONUKANDATHIL HOUSE, VADAKANGARA POST, MALAPPURAM.

BY P.P. SRI.S.U. NAZAR.
BY ADV. SRI.K.R.SAJITH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1753 OF 2007

Dated this the 5th day of June, 2007

ORDER

The petitioner faces indictment in a prosecution for the offence punishable under Sec.376 of the IPC. As he was not available for trial, the case has been transferred to the list of Long Pending Cases and the same is pending as L.P.No.11/04 of the Judicial First Class Magistrate, Malappuram. The crux of the allegations against the petitioner is that he had induced the 2nd respondent – a girl, with whom he was intimate to have sexual intercourse; but had gilted her later. He allegedly went abroad leaving the 2nd respondent in the lurch obliging her to lodge a complaint.

2. The circumstances have changed now. Fortune has smiled favourably on the petitioner and the 2nd respondent. They have settled all their disputes and differences. Now they have got married and are living happily. The petitioner is

employed abroad and the marriage has taken place. The spouses are leading a harmonious life. Continuance of the prosecution is remaining an unnecessary irritant in their relationship. In these circumstances, it is prayed that the real state of affairs have been accepted by the rival contestants. The intercourse cannot be said to be rape in the strict sense. At any rate, in the interests of harmony, the composition may be accepted and all further proceedings may be dropped. On the date of offence, admittedly the 2nd respondent had crossed the age of consent. The petitioner and the 2nd respondent have filed affidavits to confirm the settlement of the disputes and the composition of the alleged offence.

3. The 2nd respondent has also entered appearance before this Court. The learned counsel for the 2nd respondent vouches for the settlement and for the signature of the 2nd respondent in the affidavit filed. I am satisfied from the averments made in the petition, from the averments in the affidavit filed and the submissions made at the Bar that the parties have settled their dispute amicably. If legally permissible and possible, I have no hesitation to agree that the joint request made by the petitioner and the 2nd respondent deserves to be accepted and they deserve

to be spared of the trauma of the continuance of the prosecution. The offence under Sec.376 of the IPC is not compoundable under Sec.320 of the Cr.P.C. and the offence of rape cannot hence be compounded. The learned counsel for the petitioner, in these circumstances, relies on the decision in **B.S. Joshy v. State of Haryana** (AIR 2003 SC 1386). Of course, I have repeatedly held that **B.S. Joshy v. State of Haryana** (AIR 2003 SC 1386) does not obliterate the distinction between the compoundable and non-compoundable offences. But in a case like this, the dictum in **B.S. Joshy v. State of Haryana** (AIR 2003 SC 1386) that the interests of justice may at times transcend the interests of mere law and in such exceptional cases powers under Sec.482 of the Cr.P.C. can be invoked and Sec.320 of the Cr.P.C. cannot be a fetter to the invocation of such power applies and has to be accepted.

4. I am satisfied that this is an eminently fit case where the harmonious settlement of the disputes between the spouses can be accepted and the proceedings brought to premature termination.

5. Notice has been given to the learned Public Prosecutor. The learned Public Prosecutor also confirms that the State has

no objection in this Court adopting such a course in the interests of justice.

6. In the result:

(i) This Crl.M.C. is allowed.

(ii) The prosecution against the petitioner pending as L.P.No.11/04 of the Judicial First Class Magistrate, Malappuram, is hereby quashed. Needless to say that the proceedings under Sec.446 of the Cr.P.C., if any pending, must be taken to its logical conclusion.

7. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge